

IN PRISON FOR NOT PAYING COUNCIL TAX?

Rona Epstein looks at the law on council tax debt

By Sally Etchells Illustrations by PPaint

We all have to pay council tax. It funds services, such as emptying the bins and cleaning the roads, that local authorities oversee. If you owe the council some of the tax, it may order you to appear at the magistrates' court because of the debt.

The magistrates must make an enquiry into your financial situation (income, outgoings, dependents). They must then make a decision: are you guilty of "wilful refusal to pay" or "culpable neglect to pay"?

If they find that you are guilty of wilful refusal or culpable neglect to pay your council tax – this means you have the resources but you have refused to use the money to clear your council tax debt. In these circumstances, what should the magistrates order? As explained in a previous edition of this magazine, magistrates have a number of options, including a prison sentence of up to three months. However, and this is why we have come back to

this issue, jail should be a last resort. Imprisonment should not be imposed if there is an alternative way to recover the money that you owe. If there is an alternative, for example, ordering that the money is paid by being automatically taken from benefits, a pay cheque or savings, you should NOT be sent to prison.

If, on the other hand, you genuinely do not (and did not) have any way of paying the council tax, you cannot be found guilty of wilful refusal or culpable neglect, as you would have paid the money if you had been able to. In these circumstances, the court has the power to cancel the debt.

The magistrates have no power to >>



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punish anyone for not paying council tax. Judges have said this in the High Court again and again. It is not a crime to be in debt. The magistrates cannot use imprisonment for punishment, but they do have the power to order imprisonment as a means of forcing someone to pay council tax if they have the money to pay but refuse to do so.

ONE WOMAN'S STORY

Amanda A. is a mother of five and a victim of domestic violence. She owed £7,000 in council tax arrears. Her youngest son is disabled (autistic) and she struggled to look after her family. Dartford Magistrates sent her to prison for three months for non-payment of council tax although she offered to pay £20 per week to clear off the debt. After 74 days in prison, she filled in a form given out by Women in Prison asking women about their circumstances.

When I saw the form, I contacted an expert lawyer who specialises in this poorly known field of law. He ensured that she was released on bail. When the case came before the High Court three months later, the Court found that the magistrates had made no fewer than five basic errors and they quashed the magistrates' decision. The Court found that the magistrates had failed to consider her offer to pay £20 per week. They should have tried alternative methods to get the debt repaid, for example ordering a regular

deduction from her husband's earnings. They should have also considered the welfare of the children and their rights to their mother's care, but they had made no enquiries about the children, nor considered them.

WRONGFUL IMPRISONMENT

I believe that the 40 or so women sent to prison every year for council tax default should not be there. Sending them to prison is an error, a wrongful decision. Magistrates, like everyone else, can and do make mistakes in their understanding of the law.

So, what should you do if you or someone you know is in prison for owing council tax? Please contact me via the Freepost address (see below) at Women in Prison as soon as possible.

Expert legal advice is available and could make all the difference.

"The magistrates have no power to punish anyone for not paying council tax"

Please write to:

Rona Epstein
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FREEPOST RSLB-UABE-TYRT
Unit 10, The Ivories
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Rona Epstein is a research assistant in the Law School at Coventry University. She is now doing research with Lucy Baldwin, De Montfort University, on women who have served short periods of imprisonment (less than six months) What were their experiences? What were the effects?
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